

AMENDED IN ASSEMBLY MARCH 22, 2010

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

ASSEMBLY BILL

No. 2423

Introduced by Assembly Members Niello, Anderson, and Solorio

February 19, 2010

An act to amend Section 62.5 of the Labor Code, relating to employment.

LEGISLATIVE COUNSEL'S DIGEST

AB 2423, as amended, Niello. Department of Industrial Relations: funds: employer surcharges: ~~regulations: and assessments.~~

Existing law establishes the Workers' Compensation Administration Revolving Fund, the Uninsured Employers Benefits Trust Fund, the Subsequent Injuries Benefits Trust Fund, and the Occupational Safety and Health Fund in the State Treasury and requires the Director of Industrial Relations to levy a separate surcharge upon all employers for purposes of deposit in those funds. Existing law *also requires the director to levy and collect assessments from employers to be deposited in the Workers' Compensation Fraud Account in the Insurance Fund for the purposes of investigation and prosecution of workers' compensation fraud and the willful failure to secure payment of workers' compensation.* Existing law requires the director to adopt reasonable regulations governing the manner of collection of ~~the~~ *these* surcharges and ~~exempts those regulations from the rulemaking provisions of the Administrative Procedure Act~~ *assessments.*

This bill would ~~delete that exemption from the rulemaking provisions of the Administrative Procedure Act~~ *state the intent of the Legislature to enact legislation that would require the Department of Industrial Relations to convene an advisory committee consisting of employers,*

injured workers, doctors, and other stakeholders when setting the assessments and surcharges in compliance with Sections 62.5 and 62.6 of the Labor Code.

Vote: majority. Appropriation: no. Fiscal committee: ~~yes~~-no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 ~~SECTION 1. It is the intent of the Legislature to enact~~
2 ~~legislation that would require the Department of Industrial~~
3 ~~Relations to convene an advisory committee consisting of~~
4 ~~employers, injured workers, doctors, and other stakeholders when~~
5 ~~setting the assessments and surcharges in compliance with Sections~~
6 ~~62.5 and 62.6 of the Labor Code.~~

7 ~~SECTION 1. Section 62.5 of the Labor Code is amended to~~
8 ~~read:~~

9 ~~62.5. (a) (1) The Workers' Compensation Administration~~
10 ~~Revolving Fund is hereby created as a special account in the State~~
11 ~~Treasury. Moneys in the fund may be expended by the department,~~
12 ~~upon appropriation by the Legislature, for all of the following~~
13 ~~purposes, and may not be used or borrowed for any other purpose:~~

14 ~~(A) For the administration of the workers' compensation~~
15 ~~program set forth in this division and Division 4 (commencing~~
16 ~~with Section 3200), other than the activities financed pursuant to~~
17 ~~Section 3702.5.~~

18 ~~(B) For the Return-to-Work Program set forth in Section 139.48.~~

19 ~~(C) For the enforcement of the insurance coverage program~~
20 ~~established and maintained by the Labor Commissioner pursuant~~
21 ~~to Section 90.3.~~

22 ~~(2) The fund shall consist of surcharges made pursuant to~~
23 ~~paragraph (1) of subdivision (f).~~

24 ~~(b) (1) The Uninsured Employers Benefits Trust Fund is hereby~~
25 ~~created as a special trust fund account in the State Treasury, of~~
26 ~~which the director is trustee, and its sources of funds are as~~
27 ~~provided in paragraph (1) of subdivision (f). Notwithstanding~~
28 ~~Section 13340 of the Government Code, the fund is continuously~~
29 ~~appropriated for the payment of nonadministrative expenses of the~~
30 ~~workers' compensation program for workers injured while~~
31 ~~employed by uninsured employers in accordance with Article 2~~
32 ~~(commencing with Section 3710) of Chapter 4 of Part 1 of Division~~

4, and shall not be used for any other purpose. All moneys collected shall be retained in the trust fund until paid as benefits to workers injured while employed by uninsured employers. Nonadministrative expenses include audits and reports of services prepared pursuant to subdivision (b) of Section 3716.1. The surcharge amount for this fund shall be stated separately.

(2) ~~Notwithstanding any other provision of law, all references to the Uninsured Employers Fund shall mean the Uninsured Employers Benefits Trust Fund.~~

(3) ~~Notwithstanding paragraph (1), in the event that budgetary restrictions or impasse prevent the timely payment of administrative expenses from the Workers' Compensation Administration Revolving Fund, those expenses shall be advanced from the Uninsured Employers Benefits Trust Fund. Expense advances made pursuant to this paragraph shall be reimbursed in full to the Uninsured Employers Benefits Trust Fund upon enactment of the annual Budget Act.~~

(4) ~~Any moneys from penalties collected pursuant to Section 3722 as a result of the insurance coverage program established under Section 90.3 shall be deposited in the State Treasury to the credit of the Workers' Compensation Administration Revolving Fund created under this section, to cover expenses incurred by the director under the insurance coverage program. The amount of any penalties in excess of payment of administrative expenses incurred by the director for the insurance coverage program established under Section 90.3 shall be deposited in the State Treasury to the credit of the Uninsured Employers Benefits Trust Fund for nonadministrative expenses, as prescribed in paragraph (1), and notwithstanding paragraph (1), shall only be available upon appropriation by the Legislature.~~

(e) (1) ~~The Subsequent Injuries Benefits Trust Fund is hereby created as a special trust fund account in the State Treasury, of which the director is trustee, and its sources of funds are as provided in paragraph (1) of subdivision (f). Notwithstanding Section 13340 of the Government Code, the fund is continuously appropriated for the nonadministrative expenses of the workers' compensation program for workers who have suffered serious injury and who are suffering from previous and serious permanent disabilities or physical impairments, in accordance with Article 5 (commencing with Section 4751) of Chapter 2 of Part 2 of Division~~

4, and Section 4 of Article XIV of the California Constitution, and shall not be used for any other purpose. All moneys collected shall be retained in the trust fund until paid as benefits to workers who have suffered serious injury and who are suffering from previous and serious permanent disabilities or physical impairments. Nonadministrative expenses include audits and reports of services pursuant to subdivision (c) of Section 4755. The surcharge amount for this fund shall be stated separately.

(2) Notwithstanding any other law, all references to the Subsequent Injuries Fund shall mean the Subsequent Injuries Benefits Trust Fund.

(3) Notwithstanding paragraph (1), in the event that budgetary restrictions or impasse prevent the timely payment of administrative expenses from the Workers' Compensation Administration Revolving Fund, those expenses shall be advanced from the Subsequent Injuries Benefits Trust Fund. Expense advances made pursuant to this paragraph shall be reimbursed in full to the Subsequent Injuries Benefits Trust Fund upon enactment of the annual Budget Act.

(d) The Occupational Safety and Health Fund is hereby created as a special account in the State Treasury. Moneys in the account may be expended by the department, upon appropriation by the Legislature, for support of the Division of Occupational Safety and Health, the Occupational Safety and Health Standards Board, and the Occupational Safety and Health Appeals Board, and the activities these entities perform as set forth in this division, and Division 5 (commencing with Section 6300).

(e) The Labor Enforcement and Compliance Fund is hereby created as a special account in the State Treasury. Moneys in the fund may be expended by the department, upon appropriation by the Legislature, for the support of the activities that the Division of Labor Standards Enforcement performs pursuant to this division and Division 2 (commencing with Section 200), Division 3 (commencing with Section 2700), and Division 4 (commencing with Section 3200). The fund shall consist of surcharges imposed pursuant to paragraph (3) of subdivision (f).

(f) (1) Separate surcharges shall be levied by the director upon all employers, as defined in Section 3300, for purposes of deposit in the Workers' Compensation Administration Revolving Fund, the Uninsured Employers Benefits Trust Fund, the Subsequent

1 Injuries-Benefits Trust Fund, and the Occupational Safety and
2 Health Fund. The total amount of the surcharges shall be allocated
3 between self-insured employers and insured employers in
4 proportion to payroll respectively paid in the most recent year for
5 which payroll information is available. The director shall adopt
6 reasonable regulations governing the manner of collection of the
7 surcharges. The regulations shall require the surcharges to be paid
8 by self-insurers to be expressed as a percentage of indemnity paid
9 during the most recent year for which information is available;
10 and the surcharges to be paid by insured employers to be expressed
11 as a percentage of premium. In no event shall the surcharges paid
12 by insured employers be considered a premium for computation
13 of a gross premium tax or agents' commission. In no event shall
14 the total amount of the surcharges paid by insured and self-insured
15 employers exceed the amounts reasonably necessary to carry out
16 the purposes of this section.

17 (2) The surcharge levied by the director for the Occupational
18 Safety and Health Fund, pursuant to paragraph (1), shall not
19 generate revenues in excess of fifty-two million dollars
20 (\$52,000,000) on and after the 2009-10 fiscal year, adjusted for
21 each fiscal year as appropriate to reconcile any over/under
22 assessments from previous fiscal years pursuant to Sections 15606
23 and 15609 of Title 8 of the California Code of Regulations, and
24 may increase by not more than the state-local government deflator
25 each year thereafter through July 1, 2013, and, as appropriate, to
26 reconcile any over/under assessments from previous fiscal years.
27 For the 2013-14 fiscal year, the surcharge level shall return to the
28 level in place on June 30, 2009, adjusted for inflation based on the
29 state-local government deflator.

30 (3) A separate surcharge shall be levied by the director upon all
31 employers, as defined in Section 3300, for purposes of deposit in
32 the Labor Enforcement and Compliance Fund. The total amount
33 of the surcharges shall be allocated between employers in
34 proportion to payroll respectively paid in the most recent year for
35 which payroll information is available. The director shall adopt
36 reasonable regulations governing the manner of collection of the
37 surcharges. In no event shall the total amount of the surcharges
38 paid by employers exceed the amounts reasonably necessary to
39 carry out the purposes of this section.

1 ~~(4) The surcharge levied by the director for the Labor~~
2 ~~Enforcement and Compliance Fund shall not exceed thirty-seven~~
3 ~~million dollars (\$37,000,000) in the 2009-10 fiscal year, adjusted~~
4 ~~as appropriate to reconcile any over/under assessments from~~
5 ~~previous fiscal years, and shall not be adjusted each year thereafter~~
6 ~~by more than the state-local government deflator, and, as~~
7 ~~appropriate, to reconcile any over/under assessments from previous~~
8 ~~fiscal years pursuant to Sections 15606 and 15609 of Title 8 of the~~
9 ~~California Code of Regulations.~~
10 ~~(g) On and after July 1, 2013, subdivision (c) and paragraphs~~
11 ~~(2) to (4), inclusive, of subdivision (f) are inoperative, unless a~~
12 ~~later enacted statute, that is enacted before July 1, 2013, deletes~~
13 ~~or extends that date.~~